

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM BLACK,

Plaintiff-Appellant,

v

CELESTINE MABENE,

Defendant-Appellee,

and

ARTIS L. BLAND,

Defendant.

UNPUBLISHED

July 29, 2003

No. 238482

Wayne Circuit Court

LC No. 01-123307-CH

Before: Owens, P.J., and Bandstra and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order denying his motion for a default judgment against defendants¹ for failure to answer or otherwise plead in response to the complaint, and instead entering judgment in favor of defendants in this declaratory judgment action. We reverse and remand.

I

Defendant failed to pay her 1996 property taxes. In May 1999, defendant's property was auctioned to pay the back taxes, and plaintiff successfully bid on the property. After receiving notice of the tax sale, defendant was given one year to redeem her property by paying her back taxes. Defendant failed to redeem the property; consequently, the Michigan State Treasurer issued plaintiff a tax deed. After defendant received notice of the tax deed, she was given an additional six months to pay her back taxes. Again, defendant failed to redeem the property. Plaintiff filed an action to quiet title after defendant failed to pay the back taxes before the close of the second redemption period. Personal service of the Summons and Complaint was made on

¹ From the record before us, Artis Bland neither answered plaintiff's complaint nor appeared before the trial court to contest the default judgment; therefore, for ease of reference, the singular "defendant" will be used to refer to Celestine Mabene.

defendant who subsequently failed to answer the Complaint. Plaintiff then filed an Application for Default followed by his Motion for Entry of Default Judgment.

At the time of the hearing on the Motion for Entry of Default Judgment, defendant had neither filed a response to plaintiff's motion nor had she filed an affidavit of facts showing a meritorious defense and establishing good cause for failure to defend as required under MCR 2.603(D)(1). Defendant, however, appeared at the motion hearing without counsel. At the hearing, defendant argued that although she received notice of the motion, she was unable to respond because she was busy seeing doctors and neurologists to complete her case for social security disability benefits due to her alleged epilepsy. During the hearing, the trial court questioned defendant under oath about her disability and the payment of taxes for the property. Plaintiff was not allowed to question defendant. At the conclusion of the short hearing, the court not only denied the motion for entry of default judgment, but entered judgment for defendant:

THE COURT: The Court is going to deny the motion for entry of default judgment. The Court is going to find inadequate notice to Miss Mabene [defendant] and set aside the tax deed. Miss Mabene, you'll have to enter an order to that effect.

MR. CASTERLINE [plaintiff's attorney]: And the ground for saying it was inadequate was what?

THE COURT: The mental condition of the Plaintiff [sic].

II

This Court reviews a trial court's decision on a default judgment for an abuse of discretion. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). An abuse of discretion requires a showing that the court made a palpable and gross violation of fact or logic that demonstrated perversity of will, defiance of judgment, and the exercise of passion or bias rather than of reason. *Henritzy v General Electric Co*, 182 Mich App 1, 7; 451 NW2d 558 (1990), quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

The policy of the Court is to uphold properly entered defaults. *Barclay v Crown Building and Development, Inc*, 241 Mich App 639, 653; 617 NW2d 373 (2000). Under MCR 2.603(D)(1), a party seeking to set aside a default must establish two separate criteria. First, good cause must be shown and second, an affidavit of facts must be filed showing a meritorious defense.² In order to establish good cause, either (1) a procedural irregularity or defect must be shown, or (2) a reasonable excuse must be provided for not complying with the requirements that created the default. *Barclay, supra* at 653. Manifest injustice is not considered to be a third

² Plaintiff argues that the trial court abused its discretion by ignoring his motion and, instead, proceeding to take defendant's testimony. We conclude that no abuse occurred. The trial court may conduct hearings or a trial by jury if it deems such necessary to establish the truth of an allegation, to determine damages, or investigate any other matter. MCR 2.603(B)(3)(b). In the instant case, it appears as though the trial judge questioned defendant in order to investigate the matter of the payment of the property taxes.

category of good cause that excuses a failure to comply with the court rules. *Barclay, supra* at 653.

In the instant case, there was no questioning or finding by the trial court that defendant had shown good cause in failing to answer the complaint. In the absence of good cause, the properly entered default could not be set aside. *Alken-Ziegler, supra; Barclay, supra*. Although the trial court may have implicitly found that defendant had a meritorious defense to the underlying tax issue (though the court did not articulate it that way), finding that a meritorious defense exists was not sufficient in and of itself to warrant setting aside a properly entered default. *Barclay, supra*. Therefore, on the record before us, the trial court should have granted the motion for entry of default judgment.³

We further note that there is no record support for the trial court's conclusion that notice of the tax sale was inadequate based on defendant's mental condition. Defendant never argued that she did not receive notice of the tax sale or that notice was inadequate. In fact, according to the record, defendant admitted receiving notice. Defendant's only reference to inadequate notice was after prompting by the trial court. In addition, neither party briefed the issue of notice. Thus, the trial court not only lacked a factual basis for ruling that defendant was given inadequate notice, but also abused its discretion by deciding to set aside the default on its own motion without giving plaintiff prior notice or a fair opportunity to prepare. *Haji v Prevention Ins Agency, Inc*, 196 Mich App 84, 88-90; 492 NW2d 460 (1992).

Reversed and remanded for entry of a default judgment. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Christopher M. Murray

³ Defendant argues that the court properly entered judgment in her favor under MCR 2.116(I)(1). However, that court rule did not authorize the trial court's ruling. First, the governing criteria in light of the procedural posture of this case was under MCR 2.603, not 2.116. Second, defendant had not filed any pleadings or affidavits upon which the trial court could conclude anything, let alone that defendant was entitled to judgment as a matter of law. Finally, the "proof," consisting of defendant's answers to the court's leading questions, which answers were not subject to cross-examinations, was insufficient to rule in defendant's favor.